BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Gordon Lodge, LLC Dist. 1, Map 54, Control Map 54, Parcel 23.00 Residential Property Tax Year 2007	)) Carter County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,153,000	$216,100	$1,369,100	$342,275

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on October 24, 2007 in Elizabethton, Tennessee. In attendance at the hearing were Horace Broome, III, Gerald Holly, Carter County Assessor of Property, and Ronnie Taylor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 12.04 acre tract improved with a single family residence. Subject property is located on Wautaga Lake in Butler, Tennessee.

The taxpayer contended that subject property should be valued at approximately $900,000-$950,000. In support of this position, Mr. Broome, a state certified appraiser, testified that he appraised subject property in 2002 for $500,000 and it contained 14 acres at that time. Mr. Broome stated that in is opinion subject property's current market value is somewhere between $900,000 and $950,000. Mr. Broome maintained that the steepness of much of the acreage reduces its value.

The taxpayer also asserted that the current appraisal of subject land does not achieve equalization. In support of this contention, Mr. Broome noted that two nearby parcels are appraised at significantly less per acre despite their greater utility.

The assessor contended that subject property should remain valued at $1,369,100. In support of this position, two comparable sales were introduced into evidence. In addition, Mr. Holly maintained that the current appraisal of subject land does, in fact, achieve equalization as evidenced by the various appraisals summarized by the property record cards introduced into evidence as collective exhibit #6.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at $1,369,100 absent additional evidence from the taxpayer.

Since the taxpayer is appealing from the determination of the Carter County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2007 constitutes the relevant issue. Respectfully, the administrative judge finds Mr. Broome did not introduce any sales or statistical data to substantiate his opinion of value.

The administrative judge finds that any loss in value due to the steepness of subject lot cannot be quantified absent additional evidence. Indeed, no photographs were even introduced into evidence to show the steepness of subject tract.

The administrative judge finds merely reciting factors that could cause a dimunition in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities. . .was too high. In support of that position, she claimed that. . .the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject

> property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the State Board of Equalization has historically adhered to a market value standard when setting values for property tax purposes. See *Appeals of Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to "equalization" of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.[1] The State Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. For example, in *Stella L. Swope* (Davidson County, Tax Years 1993 and 1994), the Assessment Appeals Commission rejected such an argument reasoning as follows:

> The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,153,000	$216,100	$1,369,100	$342,275

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

[1] See Tenn. Code Ann. §§ 67-5-1604-1606. Usually, in a year of reappraisal – whose very purpose is to appraise all properties in the taxing jurisdiction at their fair market values – the appraisal ratio is 1.0000 (100%). That is the situation here.

the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29th day of October, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Horace A. Broome, III
Gordon Lodge, LLC
Gerald Holly, Assessor of Property

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October 29, 2007

MEMORANDUM

TO: Mr. Horace A. Broome, III
Gordon Lodge, LLC
Gerald Holly, Carter Co. Assessor of Property

FROM: Mark J. Minsky, Administrative Judge MJM

SUBJECT: Gordon Lodge, LLC Appeal

Enclosed please find my initial decision and order in the above-referenced appeal. I have also enclosed a copy of Tenn. Code Ann. § 67-5-1514 which is the statute I referred to at the hearing concerning representation at hearings before the State Board of Equalization.

MJM:kh

Enc.